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November 16, 1992

The Honorable Dan Morales  
Attorney General  
Office of the Attorney General  
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P. O. Box 12548, Capitol Station  
Austin, Texas 78711-2548

RQ-464  
file # ~~AL-18026-92~~  
FD # 18026/18150

RQ-464

Re: Local Government Code Section 380.001

Dear Attorney General Morales:

This Letter requests an opinion on four questions: (1) Is the establishment of a program for economic development by a municipality pursuant to Section 380.001 of the Local Government Code constitutional? (2) Do each of the incentives outlined below, when used singularly or in combination, constitute a "program ... to promote state or local economic development" as that phrase is used in Section 380.001 of the Local Government Code? (3) Can a municipality issue bonds to fund incentives which are included in a program for economic development established under Section 380.001 of the Local Government Code? and (4) Are there any constitutional or statutory prohibitions or preemptions that would preclude inclusion of any of the incentives outlined below in a program for economic development established under Section 380.001 of the Local Government Code?

Section 380.001 is the enabling legislation enacted pursuant to Article III Section 52-a of the Constitution, which allows the legislature to "provide for the creation of programs and making of loans and grants of public money" for specified purposes, including the "development and diversification of the economy of the state." Section 380.001(a) reads:

The governing body of the municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality.

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My questions arise because a municipality is considering establishing a program to provide financial incentives to encourage economically desirable businesses to either relocate to or expand within the municipality. The municipality has determined that the measures under consideration would aid in the relocation or expansion of businesses, and consequently would promote state or local economic development and stimulate business and commercial activity in the municipality.

Constitutionality. Article III Section 52-a was added to the Constitution in 1989. It reads in pertinent part as follows:

Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money, other than public money otherwise dedicated by this constitution to use for a different purpose, for the public purpose of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state.

The Legislature has chosen to "provide for the creation of programs" by enacting Section 380.001 which enables municipalities to create the actual programs. This delegation to municipalities seems perfectly permissible to me under the language in Article III Section 52-a. I am requesting your opinion that a program established by a municipality pursuant to Section 380.001 is indeed constitutional.

Scope of the Statute. My second question concerns the scope of Section 380.001. As mentioned above, a municipality is considering the establishment of a program for economic development which would provide financial incentives to businesses to expand in or relocate to the municipality. The proposal is based upon the municipality's determination that each incentive, whether implemented either singularly or in combination, would lead to the expansion or relocation of business, and as a result would promote state and local economic development and stimulate business and commercial activity in the municipality. I would like your opinion as to whether or not the proposal would constitute a "program ... to promote state or local economic development" as that phrase is used in Section 380.001.

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The municipality proposes a program that would authorize the municipality to offer one, any combination, or all, of the following incentives to business;

1. Waiver of city fees related to zoning, site plan, subdivision and construction of facilities for a business.
2. Execution by the municipality (as lessee) of a building lease agreement, and execution (as sublessor) of a sublease agreement subleasing the building to a business.
3. Waiver of rent otherwise required under the terms of the sublease referred above.
4. Modification of the sublease agreement referenced above to grant the tenant business a purchase option at the expiration of the sublease at less than fair market value.
5. A cash grant by the municipality to be used by a business for the training of existing employees for different tasks.
6. A cash grant by the municipality to be used by the business to pay the salaries and fringe benefits of new employees during a specified period.
7. A cash grant by the municipality to be used by the business for research and development of new products and/or services at facilities located in the municipality.
8. A cash grant by the municipality to be used by the business for purchase or lease of property, plant or equipment to be located in the municipality.
9. Provision by the municipality at its expense of city service extensions to the relocation or expansion site.
10. Creation and funding by the municipality of a non-profit corporation for purpose of providing educational instruction and job training of employee that could become employees of the business.

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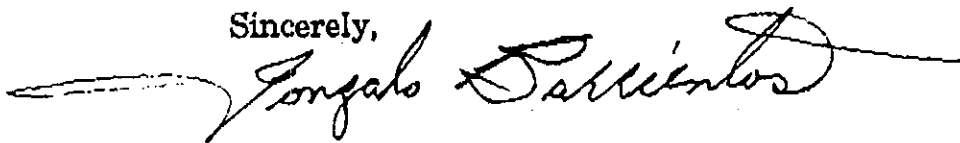
11. Cash grants to a business, unrestricted as to use, not to exceed a percentage specified by the municipality of the tax revenues by the municipality as a result of the relocation or expansion of the received business.

The proposal outlined above is being considered as a "program ... to promote state or local economic development" as that phrase is used in section 380.001. Does each possible incentive fit within the language of the statute? Should you determine, that any particular incentive does not fit within the statutory definition, please specifically note that incentive.

Prohibitions. Finally, assuming that some or all of the incentives outlined above would constitute a program for economic development that is constitutional, I would like your opinion as to whether any other constitutional or statutory provision prohibits, precludes, or preempts the municipality from establishing and administering any of the incentives. As the statutory language in Section 380.001 is unrestricted, and as Article III section 52-a begins with the language—"notwithstanding any other provision of this constitution," it seems to me that there should be no statutory or constitutional impediments to the program operating as intended.

I appreciate your consideration of this request, and look forward to your response.

Sincerely,



Gonzalo Barrientos  
State Senator

GB/pdw

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 Re: Opinion Letter Master No.: 804915 Attorney No.: 0404  
 Date: November 17, 1992

**RETURN TRANSMITTED FAX TO:** Gloria Colvin

REMARKS: Sorry it took so long.

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